

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES**

MARCH 19, 2002

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Senate Budget Subcommittee is scheduled to consider the State Personnel Board's budget on March 20, 2002. The Subcommittee is expected to focus on the Bilingual Services report and an unrelated issue involving compensation of local agencies for costs associated with the Peace Officer's Bill of Rights.
- B. The Department of Finance is continuing its review of vacant positions at the State Personnel Board.

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:

<http://www.spb.ca.gov/spbmeet/spbminrd.cfm>

The Board doesn't anticipate any significant reduction in positions because of this effort.

- C. The Senate voted to approve SB 728. This bill approves the California State Employees Association's MOU containing "Post and Promote" provisions.
- D. James Waller, Marion Rutkauskas and Walter Rawlins former employees of the State Personnel Board recently passed away.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel Reported on:

Litigation

- A. Alvarado v. State Personnel Board - Petitioner has filed a notice of appeal.
- B. Deanna Davies v. State Personnel Board - Petition for writ has been filed in superior court challenging State Personnel Board's decision on backpay in this case.
- C. International Union of Operating Engineers (IUOE) v. State of California (petition to enforce arbitration award) - Parties are still debating contents of proposed judgment denying IUOE's petition, but proposed judgment has now been submitted to superior court judge.

Other

- A. Labor and Employment Section of County Bar - Annual seminar held March 16, 2002, involved discussion by 9 expert attorneys of hypothetical case involving state employee who had whistleblower retaliation, sexual harassment, and unfair labor practice claims. The seminar was well-attended by state attorneys and unions.
- B. Council of Counsels - The group met on March 7, 2002, and discussed a number of issues, including

update on pilot projects, implementation of State Personnel Board's Archuleta decision, establishment of more formal process for encouraging settlement conferences in multiple day hearing cases, etc.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. The State Personnel Board was asked to make a presentation to the Senate Budget Committee Sub 4 chaired by Senator Polanco, the testimony was presented at the Department of Personnel Administration's (DPA) budget hearing. The subject was the "Post and Bid" provision that is included in the MOU bargaining agreement between DPA and Bargaining units 1, 4, and 11. Elise Rose, Chief Counsel and Laura Aguilera, Assistant Executive Officer represented the State Personnel Board at the hearing.
- B. SB 728 (Machado) was approved by the Senate and will now be sent to the Governor for action. This bill is the MOU legislation for bargaining units 1, 3, 4, 11, 15, and 21. The State Personnel Board has been opposed to SB 728 because the bill will approve the "Post and Bid" provision for units 1, 4, and 11.
- C. SB 987 (Escutia) deals with the Dymally-Alatorre Bilingual Services Act. The State Personnel Board will offer amendments to the author that would implement recommendations made by the report entitled "Updated Assessment of Bilingual Services in State Departments," this report was approved by the State Personnel Board in February 2002.

The State Personnel Board voted on the following:

- A. AB 2034 (Horton) will specify that the State Personnel Board is authorized to charge for costs associated with Board hearings conducted as the result of complaints filed with the State Personnel

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Board by community college employees concerning retaliation they have experienced as the result of having reported improper governmental activities.

SUPPORT

VOTE: Alvarado, Elkins, Bos - Aye.

- B. SB 1503 (Ackerman) is sponsored by the State Personnel Board. The bill will shorten the time from one year to 90 days that parties have to challenge decisions and orders of the State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF FEBRUARY 20 AND MARCH 5, 2002

ACTION: Adopted on March 19, 2002.

VOTE: Alvarado, Elkins, Bos - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES

On March 19, 2002, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

PROPOSED DECISIONS

BRYAN E. JONES, CASE NO'S. 99-3883 and 99-4930

Appeal from dismissal - Appeal of
whistleblower/retaliation

Electrician II

California Exposition and State Fair

ACTION: Administrative Law Judge's proposed decision rejected by Board. Board to decide case itself.

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CHAUNCEY REESE-JONES, CASE NO. 01-2966

Appeal from formal reprimand

Correctional Officer

Ironwood - State Prison

Department of Corrections

ACTION: Formal reprimand sustained

CAROLINE CASTRO, CASE NO. 01-1540

Appeal from six months suspension

Deputy Labor Commissioner I

Department of Industrial Relations

ACTION: Six months suspension modified to a four months suspension

MANDY RAWERS, CASE NO. 01-3642

Appeal from five percent reduction

in salary for six months

Correctional Officer

Corcoran - State Prison

Department of Corrections at Corcoran

ACTION: Five percent reduction in salary for six months sustained

CAROLANN MACGINNIS, CASE NO. 01-2251E

Appeal from discrimination

Resource Specialist, Special Education

Ione - School of Industry

Department of the Youth Authority

ACTION: Discrimination complaint dismissed

EUGENE McKENZIE II, CASE NO. 01-0257

Appeal from five percent reduction

in salary for 12 months

Industrial Warehouse and

Distribution Supervisor

Prison Industry Authority

ACTION: Five percent reduction in salary for 12 months sustained

LAQUITTA PETERSON, CASE NO. 99-5285B

Appeal for determination of back salary,

benefits and interest after reinstatement

Correctional Lieutenant

Corcoran - State Prison

Department of Corrections

ACTION: Back salary, benefits and interest awarded

MICHAEL LAGMAY, CASE NO. 01-2464
Appeal from dismissal
Psychiatric Technician Assistant
Eldridge - Developmental Center
Department of Developmental Services
ACTION: Dismissal sustained

JEN-MIN WANG, CASE NO. 01-1796
Appeal from dismissal
Staff Psychiatrist (CF)
Lancaster - California State Prison
Department of Corrections
ACTION: Dismissal modified to a four months suspension

MARK JERRY, CASE NO. 01-2160
Appeal from rejection during
probationary period
Officer
Department of California Highway
ACTION: Rejection during probationary period sustained

DONNA CARROLL-RHODES, CASE NO. 99-4973B
Appeal for determination of back salary,
benefits and interest after reinstatement
Communications Operator II
Department of California Highway Patrol
ACTION: Interest on the backpay awarded

OLIVER ALBERT, CASE NO. 01-1639
Appeal from dismissal
Correctional Officer
San Quentin - California State Prison
Department of Corrections
ACTION: Dismissal sustained

EDDIE FRANCO, CASE NO. 99-0756
Appeal from dismissal
Youth Correctional Counselor
Department of the Youth Authority
ACTION: Dismissal revoked

DEWEY V. ANDERSON, CASE NO. 00-0083
Appeal from dismissal
Officer
Department of California Highway Patrol
ACTION: Dismissal revoked

PETITIONS FOR REHEARING

YOLANDA CANEDO, CASE NO. 00-4072P
Appeal of discrimination/retaliation
Associate Warden
Blythe-State Prison
Department of Corrections
ACTION: Petition for rehearing filed by respondent
granted

LISA GRAY, CASE NO. 00-0004P
Appeal from five percent reduction
in salary for 12 months
Motor Vehicle Field Representative
(Range C)
ACTION: Petition for rehearing filed by appellant
granted

THERESA HERROZ, CASE NO. 01-1592P
Appeal from dismissal
Youth Correctional Officer
Department of the Youth Authority
ACTION: Petition for rehearing filed by respondent
denied

SYLVIA RAMIREZ, CASE NO. 01-1958P
Appeal From Five Day Suspension
Eligibility Worker II
Calaveras Works and Human Services Agency
Calaveras County
ACTION: Petition for rehearing filed by appellant denied

MARIE-ROSE JOHNSON, CASE NO. 01-1461E
Appeal from discrimination complaint
Office Technician (Typing)
Department of Social Services
ACTION: Petition for rehearing filed by appellant
granted

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 16-19.

8. WITHHOLD APPEALS

On March 19, 2002, the Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

SERGIO BENAVIDES, CASE NO. 01-2118
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOE BENDER, CASE NO. 01-2020
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: GRANTED

JAMES BENNETT, CASE NO. 01-2697
Classification: Security Guard (DDS)
Department of Developmental Services
ACTION: DISMISSED

YNEZ COVARRUBIAS, CASE NO. 01-2911
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

ADAM CRAIG, CASE NO. 01-1422
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANTWON FAIR, CASE NO. 01-1698
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHN FRANCO, CASE NO. 01-1497
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

STEVEN GEDEMER, CASE NO. 01-1969
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

RICHARD GRAY, CASE NO. 01-1555
Classification: Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: DENIED

JAVIER GUTIERREZ, CASE NO. 01-1329
Classification: Youth Correctional Counselor
Department of the Youth Authority
ACTION: DENIED

BRUCE HAMILTON, CASE NO. 01-1558
Classification: Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: DENIED

GEORGE LEGARRETA, CASE NO. 01-1418
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

JUSTIN LOYA, CASE NO. 01-1499
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

BRYAN MARTINEZ, CASE NO. 01-1963
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

GUSTAVO NARANJO, CASE NO. 01-2021
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

BRINT NEWLON, CASE NO. 01-1414
Classification: Correctional Officer

Department of Corrections
ACTION: DENIED

JAMES RUSSELL, CASE NO. 01-2019
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DENIED

HECTOR SALINAS, CASE NO. 01-1446
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

CHRISTOPHER SMITH, CASE NO. 01-3278
Classification: Associate Information Systems Analyst
(Specialist)
State Personnel Board
ACTION: DENIED

JAMES SMITH, CASE NO. 00-4311
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOSHUA THOMAS, CASE NO. 01-1479
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

9. EXAMINATION APPEALS

MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS

On March 19, 2002, the Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

(Examination Appeals)
RON AALBOE, CASE NO. 01-1779
Classification: Correctional Officer
Department of Corrections

ACTION: DISMISSED

JERMAINE SANCHEZ, CASE NO. 01-2034
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

(Minimum Qualification)
NANCY MIRZA, CASE NO. 01-2273
Classification: Assistant Information Systems Analyst
Department of Education
ACTION: DISMISSED

JOHNNIE SHERLOCK, CASE NO. 01-0801
Classification: Standards Compliance Coordinator
Department of Corrections
ACTION: DISMISSED

(Merit Issue Complaint)
HUSSEIN KALAKECH, CASE NO. 00-3141
Classification: Transportation Engineer (Electrical)
Department of Transportation
ACTION: DENIED

10. RULE 211 APPEALS

On March 19, 2002, the Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.
VOTE: Alvarado, Elkins, Bos - Aye.

(Rule 211 Appeal)
JULIUS ENGEL, CASE NO. 01-3390
Classification: Deputy Attorney General
Attorney General's Office
ACTION: DENIED

11. REQUEST TO FILE CHARGES CASES

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PETITIONS FOR REHEARING CASES

On March 19, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

(Request to File Charges Case)

DWAYNE M. THOMAS, CASE NO. 00-4267

Classification: A former employee of the Department of Corrections

ACTION: Appellant's request to file charges against Allen Salley is GRANTED and Appellant's request to file charges against Ms. Bonie Long-Oliver and Ms. Joyce Richardson is DENIED.

(Petition for Rehearing Case)

JAMIE ROSAS, CASE NO. 01-0923P

Classification: Youth Correctional Counselor Department of the Youth Authority

ACTION: DENIED

12. NON-HEARING CALENDAR

On March 19, 2002, the Board adopted items B and C. Item "A" was taken under submission. These items were presented by Karen Coffee, Chief, Personnel Resources and Innovations Division, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

A. SENIOR VOCATIONAL REHABILITATION COUNSELOR (SAFETY)

The Department of Mental Health proposes to establish the class of Senior Vocational Rehabilitation Counselor (Safety) to define public protection duties performed and the special physical characteristics required of incumbents; and establishment of a 12-month probationary period.

B. HAZARDOUS SUBSTANCES ENGINEER
SENIOR HAZARDOUS SUBSTANCES ENGINEER
SUPERVISING HAZARDOUS SUBSTANCES ENGINEER I

The Department of Toxic Substances Control requests an equity resolution to allow certain incumbents in the Hazardous Substances Engineer classification series who were disadvantaged by a specification

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revision effective 1/19/00 eligibility to compete in the current examinations for Senior Hazardous Substances Engineer and Supervising Hazardous Substances Engineer I.

C. EQUITY RESOLUTION

Equity resolution to allow Richard Lopes to remain in the classification of Information Officer II.

13. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

A. COMMUNICATIONS OPERATOR, CALIFORNIA HIGHWAY PATROL
PUBLIC SAFETY DISPATCHER

The Department of California Highway Patrol proposes to retitle the Communications Operator, California Highway Patrol classification series to Public Safety Dispatcher to more accurately describe the work being performed.

ACTION: Noted

14. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY
UNDER CONSIDERATION

(1) EMERGENCY PREPAREDNESS MANAGER

The Department of General Services (DGS) proposes to allocate the above position to the CEA category. The Emergency Preparedness Manager (EPM) has a responsibility to the Governor and the Office of Emergency Services (OES) to provide emergency planning and action internally within DGS and externally with OES and other federal, state and local agencies. Specifically, the EPM is responsible for organizing, planning, directing, implementing and evaluating the statewide

activities of the DGS related to emergency preparedness and response during an emergency. The department indicates that the position is at the second organizational level and will report to the Director, DGS.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. State Personnel Board proposes regulations to clarify and codify the process for filing, processing, hearing, and deciding complaints of Whistleblower Retaliation in State Service. (Hearing held February 7, 2002).

NO ACTION

2. State Personnel Board proposes regulations to clarify the Discovery Process that will apply to evidentiary hearings concerning specified complaints or appeals, in some cases also involving alleged discrimination or retaliation. (Hearing held February 7, 2002).

NO ACTION

3. STEPHEN J. SURTSHIN, CASE NO. 00-1724P AND 00-3176P. Appeal from two-step reduction in salary for six months. Department of Mental Health. (Written argument presented February 7, 2002).

NO ACTION

4. VICTOR FINK, CASE NO. 00-2363. Appeal from medical termination, demotion and transfer. California Highway Patrol. (Oral Argument held February 8, 2002).

NO ACTION

5. MICHAEL MACKENZIE, CASE NO. 00-1817. Appeal from demotion. California Department of Corrections. (Oral Argument held February 8, 2002).

NO ACTION

6. EVELYN YOUNG, CASE NO. 00-3017. Request to File Charges Appeal. Classification: Supervising Governmental Auditor I, Department of Aging. (Presented to Board February 8, 2002).

NO ACTION

7. STATE PERSONNEL BOARD STAFF'S REPORT ON THE STATUS OF THE STATE DISCRIMINATION COMPLAINT PROCESS. (Hearing held

March 5, 2002).

NO ACTION

8. PSC NO. 01-09 (DPR)
Appeal of the Department of Pesticide Regulation (DPR) from the Executive Officer's November 8, 2001, Disapproval of Personal Services Contracts (Contracts) with PTRL West, Inc., Agricultural and Priority Pollutants Laboratories, Inc., and Battelle Memorial Institute, in response to the request for review submitted by the California Association of Professional Scientists (CAPS). (Hearing held March 5, 2002).

NO ACTION

9. MARTIN GREENHALGH, CASE NO. 01-1055. Appeal from five-percent reduction in salary for 12 months. Department of Corrections. (Hearing held March 5, 2002).

NO ACTION

10. PETE REECE, CASE NO. 00-1605. Appeal from denial of request for reasonable accommodation. Department of State Compensation Insurance Fund. (Hearing held March 5, 2002).

NO ACTION

11. EVELYN YOUNG, CASE NO. 00-3016. Appeal from 15 working days suspension. Department of Aging. (Hearing held March 5,).

NO ACTION

WITHDRAWN CASES

1. ARCHER LEVY, CASE NO. 01-1314. Appeal from withhold. Department of Corrections. (Presented January 8, 2002).
2. JOSE ZALDY OBAR, CASE NO. 01-0302. Appeal from withhold. Department of Corrections. (Presented January 8, 2002).

3. FRANK ROSA, CASE NO. 01-0629. Appeal from withhold.
Department of the Youth Authority. (Presented January 23,
2002).

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on March 19, 2002.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos - Aye.

CORRECTION

1. The Summary Minutes of January 23, 2002, inadvertently listed FRANK ROSA, CASE NO. 01-0629 twice. The correct ACTION is WITHDRAWN.